

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CR-00282-F-3

No. 5:16-CV-00777-F

REGINALD JONES,)	
)	
Petitioner,)	
vs.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

Reginald Jones has filed a motion for relief pursuant to 28 U.S.C. § 2255 [DE-812, -815].¹ For the reasons set forth below, the court will summarily dismiss Jones' motion pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 24, 2008, Jones was charged in a six-count Indictment [DE-3]. Jones was later charged in a nine-count Superseding Indictment [DE-175]. Then, on October 26, 2015, Jones was charged in a one-count Criminal Information [DE-718]. In the Criminal Information, Jones was charged with conspiracy to distribute and possess with intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. § 846.

At Jones' arraignment, held on November 2, 2015, he pled guilty to the Criminal

¹ Jones' initial attempt to initiate a claim for relief under 28 U.S.C. § 2255 was a non-conforming document [DE-812], which was filed on August 15, 2016. At the court's direction, Jones filed a "conforming" motion [DE-815] on September 15, 2016.

Information, pursuant to a written plea agreement [DE-724]. It was agreed that the Indictment as to Jones only would be dismissed at sentencing. *Id.* at 5

Jones' sentencing was held on January 26, 2016, and he was sentenced to 84 months' imprisonment. *See* Judgment [DE-754]. Jones did not file a direct appeal.

On August 15, 2016, Jones filed the instant Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-812, 815]. In his sole claim, Jones argues that he is entitled to a two-point reduction in his sentence pursuant to the retroactivity of *Quintero-Leyva*, 823 F.3d 519 (9th Cir. 2016). Mot. Vacate [DE-815] at 4.

II. LEGAL STANDARD

Rule 4 of the Rules Governing Section 2255 Proceedings ("2255 Rules") requires both a preliminary review of a § 2255 motion and a summary dismissal "[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief." 2255 Rules, Rule 4(b); *accord* 28 U.S.C. § 2255(b); *see Raines v. United States*, 423 F.2d 526, 529 (4th Cir. 1970) (stating "[w]here the files and records *conclusively* show that the prisoner is entitled to no relief, summary dismissal is appropriate") (emphasis in original). Because Petitioner is proceeding *pro se*, the court must construe his motion liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

III. DISCUSSION

Jones appears to argue that he is entitled to relief under Amendment 794 to the United States Sentencing Guidelines. Amendment 794 amended the Commentary to U.S.S.G. § 3B1.2, which

addresses a mitigating role in the offense.² *United States v. Donis-Galan*, No. 15-11209, 2016 WL 1238205, at *2 n.2 (11th Cir. March 30, 2016). Amendment 794 introduced a list of non-exhaustive factors that a sentencing court should look at when determining whether or not to apply a mitigating role adjustment.³ *United States v. Gomez-Valle*, No. 15-41115, 2016 WL 3615688, at *4 (5th Cir. July 5, 2016). Amendment 794 also states that “a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.” *Id.*

Amendment 794 has been found to apply retroactively in direct appeals. *See United States v. Quintero-Leyva*, 823 F.3d 519, 521 (9th Cir. 2016). In this case, however, Jones did not file a direct appeal, and his time for filing a direct appeal has passed.

Likewise, Amendment 794 is not retroactively applicable on collateral review. U.S.S.G. § 1B1.10 lists those Guidelines amendments that have been made retroactively applicable to defendants on collateral review, and Amendment 794 is not listed. *United States v. Perez-Carrillo*, No. 7:14CR00050, 7:16CV81172, 2016 WL 4524246, at *2 (W.D. Va. Aug. 26, 2016). Consequently, Jones is not entitled to relief under Amendment 794.

² The effective date of Amendment 794 was November 1, 2015. *See* U.S.S.G. app. C, amend. 794, at 118 (Supp. Nov. 1, 2015).

³ The factors are “(i) the degree to which the defendant understood the scope and structure of the criminal activity; (ii) the degree to which the defendant participated in planning or organizing the criminal activity; (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority; (iv) the nature and extent of the defendant's participation in the commission of the criminal activity”; and “(v) the degree to which the defendant stood to benefit from the criminal activity.” *See* U.S.S.G. app. C, amend. 794, at 116 (Supp. Nov. 1, 2015).

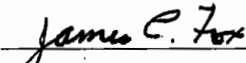
IV. CONCLUSION

For the foregoing reasons, Jones' Motion to Vacate [DE-812, -815] is SUMMARILY DISMISSED.

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, the court declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (A certificate of appealability will not issue unless there has been "a substantial showing of the denial of a constitutional right."); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (Where a court has rejected the constitutional claims on their merits, a petitioner must demonstrate that reasonable jurists would find that the court's assessment of the constitutional claims is debatable or wrong, but when a court denies relief on procedural grounds, the petitioner must demonstrate that jurists of reason would find it debatable whether the court's procedural ruling was correct).

SO ORDERED.

This the 16 day of September, 2016.



JAMES C. FOX
Senior United States District